COPC No. 43 of 2003.

12-10-2007: Present: Mr. R.K. Bawa, Senior Advocate, with Mr.Inderjit, Advocate for the petitioner.

Mr. V.K.Verma, Additional Advocate General for the respondent.

Heard and gone through the record. The petitioner was recruited as Grade-II Medical Officer in the cadre of HPHS. He claimed that he became eligible for promotion to Grade-I in the year 1983 but was not promoted. He filed an O.A. before the State Administrative Tribunal seeking promotion against the vacancy which became available in the year 1983. The Tribunal dismissed his petition. He then filed a writ petition in this Court for judicial review of the order of the Tribunal. This Court allowed the writ petition vide order dated December 19, 2002 and issued the following directions to the Secretary (Health) to the Government of Himachal Pradesh:

> "i) The State Government shall consider the claim of the petitioner for promotion from HPHS Grade-II to HPHS Grade-I against the available vacancy occurring from August, 1983 and thereafter when the petitioner passed departmental examination if he is otherwise found eligible on the basis of the H.P. Health Services Rules, 1974 and H.P. Departmental Rules, 1974 and H.P. Departmental Examination Rules, 1976 along with other HPHS Grade-II doctors who did not pass the departmental examination when they were promoted in the year 1983 and thereafter;
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> ii) If the petitioner is found eligible to be promoted as HPHS Grade-I, he shall be granted all consequential benefits as found permissible to him according to the Rules; and

iii) the case of the petitioner for promotion shall be considered by the respondent-State within a period of three months from the date of receipt of the writ order".

Now the petitioner has come to this Court alleging that the respondent has not implemented the aforesaid directions particularly direction (ii) of this Court in letter and spirit inasmuch as even though he has been given promotion to the cadre of Grade-I from a date of the year 1985, he has not been given further promotion. In the reply, it has been stated by the respondent (contemnor) that after promoting the petitioner as Grade-I Officer from a date of the year 1985, he was given further promotion as Deputy Director from a date of the year 1997 and thereafter when he along with other Deputy Directors and Chief Medical Officers became eligible for further promotion as Joint Director/Director Health Services, the Departmental Promotion Committee considered his name along with other eligible candidates but a departmental enquiry being pending against him, sealed cover procedure was followed in his case and the assessment of his merit by the said Departmental Promotion Committee has been kept in a sealed cover. It is alleged that the inquiry is still pending and as and when it concludes, sealed cover will be opened and if it is found that the Departmental Promotion Committee recommended him for promotion, he will be given promotion from due date.

From the above said position, it is clear that not only did the respondent implement the direction (i) as contained in the order dated 19.12.2002 of this Court in C.W.P. No. 810 of 2000 by giving promotion

to the petitioner as Grade-I HPHS from a date of the year 1985 but also further promoted him as Deputy Director in the year 1997 in accordance with rules of 1995 and not only this, further considered him for promotion to the post of Joint Director/Director Health Services along with other eligible candidates but as departmental inquiry was pending against him, sealed cover procedure was followed. In view of the above said position, we do not find that the respondent has dis-obeyed the order or has not complied with the order of this Court dated 19.12.2002 passed in C.W.P. No. 810of 2000 in letter and spirit. Consequently, the petition is dismissed. However, we hope that the Disciplinary Authority shall conclude the departmental proceedings by the end of this year because it has been pending since 1998.

(Surjit Singh), J.

(Surinder Singh), J.

October 12, 2007.
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